

8-3100-7876-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

Patrick S. Hoag,

Petitioner,

v.

City of Crosslake,

Respondent.

FINDINGS OF FACT,
CONCLUSIONS AND RECOMMENDATION

The above-captioned matter came on for hearing before Administrative Law Judge Jon L. Lunde commencing at 9 a.m. on Wednesday, June 22, 1994 at the Crow Wing County Social Services Building in Brainerd, Minnesota. The hearing was held pursuant to a Notice of Petition and Order for Hearing dated April 30, 1994. The record closed at the conclusion of the hearing on June 22, 1994.

Jerry O. Relph; Hughes, Thoreen, Mathews & Knapp; Attorneys at Law, Suite 200, 110 South 6th Avenue, P.O. Box 1187, St. Cloud, Minnesota 56302-1187, appeared on behalf of the Petitioner, Patrick S. Hoag, who was present at the hearing. Paul J. Sandelin; Gamello & Sandelin, P. A.; Attorneys at Law, 308 1st Street, P.O. Box 298, Pequot Lakes, Minnesota 56472, appeared on behalf of the City of Crosslake (City).

This Report is a recommendation, not a final decision. The Commissioners of the Minnesota Department of Veterans Affairs will make the final decision.

after a review of the record and may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Gerald Bender, 2XX Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota 55155, telephone (612) 251-5828, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issues in this case are whether or not the change in Petitioner's title and duties, coupled with his loss of the personal use of a City pickup and his ranking on a pay equity plan developed by the City, in their totality constituted a removal from employment giving Petitioner the right to a hearing under the Veterans Preference Act, Minn. Stat. § 197.46.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Petitioner, Patrick S. Hoag, is a Vietnam era veteran. On June 3, 1971, after serving in the United States Army for two years, Petitioner was discharged from active duty. Thereafter, he was in the inactive army reserve for four years. Ex. 1.

2. On September 4, 1973, Petitioner was employed as a road maintenance worker by the City of Crosslake, Minnesota. Over the years, he worked his way up and his duties increased. By 1980, at the Mayor's suggestion, Petitioner was given the title "superintendent of public works." At the time he was given this title neither his job duties nor his compensation changed.

3. By 1991, Petitioner was responsible for the maintenance of 44 miles of City roads: 24 miles of gravel roads and 20 miles of asphalt roads. He was also responsible for the maintenance of 7 municipal buildings, a City park, 3 bridges, a cemetery, and several municipal parking lots. His regular duties involved the supervision of 1 employee, maintenance of City equipment, including a grader, payload, dump truck and pickup, and the preparation of specifications for new equipment purchases. Each year he also prepared a maintenance budget for the City Council. The Petitioner's specific duties were not set forth in a job description. Generally speaking, he performed any duty the City Council requested and such other duties as he decided, on his own, to perform. At times, he operated City equipment and performed the same kinds of duties as the employees he supervised.

4. Petitioner did not hire and fire public works employees. He made recommendations to the City Council, but the Council made the final decision. Petitioner also needed Council approval for any expenditure exceeding \$100. The City Council generally monitored Petitioner's job duties. It designated the Mayor or a Council member to act as a liaison between Petitioner and the Council.

5. Historically, the City had no job description for its employees and no compensation plan. Employees of the City's telephone company were union members; their compensation was set in collective bargaining contracts. The compensation of other municipal employees was set by the City Council.

6. In early 1991, or before, the City contracted with ROI for development of a pay equity analysis in order to comply with the Minnesota Pay Equity Act (MPEA), Minn. Stat. §§ 471.991 - 471.999.¹

7. On or about November 29, 1991, the ROI Study was presented to the City Council. It covered all municipal employees, including those in the City's telephone company. Ex. 2. The study ranked City positions using grades from 2 to 17 as follows:

<u>JOB CLASS</u>	<u>GRADE</u>	<u>MONTHLY 1991 COMPENSATION</u>
1. Park Assistant	2	\$1,310
2. Grounds Worker (T)	3	\$1,386
3. Road Maintenance/Grader Operator	4	\$1,605
4. Billing Clerk (T)	4	\$1,865
5. Equipment Operator(T)	4	\$1,820
6. Maintenance Worker	6	\$1,456
7. Combination Technician (T)	7	\$2,430
8. Planning & Zoning Coordinator	8	\$1,499
9. Bookkeeper (T)	8	\$2,062
10. C.O.E. Technician/Installer (T)	8	\$2,667
11. Police Officer	9	\$1,750
12. Plant Manager	10	\$2,833
13. Park and Recreation Director	11	\$2,015
14. City Clerk/Treasurer	12	\$2,081
15. Public Works Superintendent	14	\$2,154
16. Police Chief	15	\$2,534
17. General Manager (T)	17	\$4,050

* Means Telephone Company Employee

Ex. 2.

8. Public hearings on the ROI Study were held late in 1991. Neither the employees nor the Council were satisfied with the study and the proposed ranking. Consequently, the Council decided to have a new proposal developed.

9. About the time that the ROI Study was being discussed, the Council also began discussing the job duties of various City employees. Late in 1991 during the course of these discussions, the Council determined that Petitioner's title should be changed from Public Works Superintendent to Public Works Foreman. The Council felt that Petitioner was more like a foreman because he was a first level supervisor and was expected to perform some of the same duties performed by the employees he supervised.

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1. MPEA was enacted to eliminate sex-based disparities in the compensation paid to municipal employees. More specifically, it addresses sex-based wage disparities between members of male-dominated versus female-dominated classes. Armstrong v. Civil Service Commission, 498 N.W.2d 471, 476 (Minn. Ct. App. 1993), rev. den. May 28, 1993.

10. The City Council decided to retain Susan H. Thurlow to develop a new equity plan for the City. Thurlow is a council member for the City of Nisswa, Minnesota and has a variety of experience relating to municipal matters, including public works and pay equity. Before being retained by Crosslake, she had developed a pay equity plan for Nisswa. In developing the plan, she had frequent contacts with staff of the Department of Employee Relations (DOER) and the League of Minnesota Cities.

11. When retained by Crosslake, Thurlow was asked to start at "ground zero" and to ignore political influences. Thurlow engaged in a thorough examination of the positions at Crosslake. Initially, each employee was required to complete a detailed questionnaire relating to the employee's job duties. Thurlow then met individually with each employee to discuss the incumbent's answers and obtain clarification or additional information. Following the employee interviews, Thurlow set about the task of ranking the various positions based on job difficulty, duties, adverse conditions over time requirements, and other factors. Her task was complicated by the absence of job descriptions and the difficulty of ranking telephone company employees which most cities don't have.

12. To rank regular municipal employees, Thurlow relied primarily on the "Hays Study" prepared for DOER to implement the MPEA and DOER's 1984 "Local Government Pay Equity SUPPLEMENT FOR SMALL CITIES" (Supplement). Ex. 12. used a broader scoring range for ranking positions than ROI used, consistent with the Supplement. She rejected the ROI ranking system because the range ROI used was so small that a one step grade differential had a significant salary differential and didn't permit any grading refinement for the unique duties of any of the positions graded.

13. In April, 1993, Thurlow presented her study and conclusions to the Crosslake City Council. She had not consulted with the Council members in developing her proposal. Under Thurlow's proposal, City employees were ranked on a job-point scale from 109 to 450. Her ranking and the salary ranges set by the Council about that time are as follows:

<u>Class Title</u>	<u>Comparable Work Value (Job Points)</u>	<u>Minimum Monthly Salary</u>	<u>Maximum Monthly Salary</u>
1. Receptionist	109	\$ 915	\$1,144
2. Assistant Clerk	120	\$1,275	\$1,914
3. Billing Clerk	150	\$1,346	\$2,055
4. Technician I	150	\$1,260	\$1,575
5. Equipment Operator	170	\$1,428	\$1,820
6. Bookkeeper	190	\$1,499	\$2,273
7. Technician II	200	\$1,680	\$2,100
8. Combination Technician	210	\$1,802	\$2,677

9.	Planner	220	\$1,848	\$2,310
10.	COE Technician	220	\$1,969	\$2,941
11.	Park Director	220	\$1,848	\$2,310
12.	Public Works Foreman	225	\$1,890	\$2,362
13.	Police Officer	236	\$1,982	\$2,478
14.	Police Sgt.	265	\$2,226	\$2,782
15.	Plant Manager	270	\$2,545	\$3,182
16.	Clerk/Treasurer	275	\$2,309	\$2,887
17.	Chief of Police	353	\$2,964	\$3,706
18.	Telephone Mgr.	450	\$3,780	\$4,725

Ex. 4

14. Under the DOER Supplement, the position of "Maintenance/Public Works Supervisor" has a comparable work value of 213 and a point range from 199 to 218. Although Petitioner's duties fit the description of a public works supervisor, Thurlow increased the point value of his position to 225 due to his expertise and his somewhat questionable engineering duties. The ranking Thurlow assigned to Petitioner's position was not affected by the fact that he was called a public works foreman instead of a public works superintendent.

15. Thurlow assigned fewer job points to Petitioner's position than were assigned to police officers, plant manager, and the city clerk/treasurer. In that respect and others not relevant here, Thurlow's ranking was different than that prepared by ROI. Thurlow's ranking is, however, consistent with the comparable work value of those positions and the DOER Supplement. Under the DOER Supplement, city clerks, police officers and police chiefs have a higher point range than public works supervisors.

16. The City's pay equity plan and salary scales were finalized on August 2, 1993. On January 24, 1994, DOER notified the City that its pay equity plan had been reviewed and found to be in compliance with MPEA. Ex.

17. When the City became involved with MPEA, it realized the need to develop job descriptions for municipal positions. It also discovered that, apart from gender, some compensation inequities existed in municipal employment. For example, the ROI Study showed that some employees were paid more than their ranking warranted. The Council addressed some of these inequities by giving compensation increases to some employees--including Petitioner--about the time Petitioner's title was changed. However, due to budgetary restraints and collective bargaining contracts, the Council was unable to obtain pay equity across the board when salary ranges were established in 1993. No employees are paid less than their duties warrant, but some are still paid too much.

18. On April 13, 1993, after the City adopted Thurlow's comparable work ranking of City employees, Petitioner filed a Petition for Relief under the Veterans Preference Act. In his Petition, he alleged that his job title was "down-graded" in late 1992 but that his responsibilities were increased and his point standing on the City's final pay equity plan had changed "drastically" from what it was under the ROI Study. He also alleged that he was being grossly underpaid as a result of his title change and that the City had ignored his grievances. He further stated that he had been harassed, falsely misled, and threatened. This hearing was ordered to consider his Petition.

19. Throughout his employment, Petitioner has had disagreements with his liaison to the City Council. However, there is no evidence in the record that Petitioner's grievances have been ignored or poorly handled or that he has been harassed, falsely misled, or threatened.

20. Petitioner's job duties did not change as a result of his title change and his compensation and benefits were not changed at that time. In fact, he received salary increases after the title change.

21. Petitioner's ranking in the City's pay equity plan was unaffected by title change.

22. Petitioner's title change was made in good faith to clarify his duties and responsibilities. Likewise, Petitioner's ranking on the City's pay equity plan was made in good faith and was not shown to be unreasonable.

23. The Petitioner has received periodic salary increases since his title change.

24. After Petitioner's title was changed, the City Council decided that except for police officers, employees were not to use City vehicles after working hours and could not, for example, drive them to and from work.

Based on the foregoing Findings of Facts, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Veterans Affairs have authority to determine if the Petitioner was removed from his employment as public works superintendent and is entitled to a hearing under Minn. Stat. §§ 197.481 and 14.50 (1992).

2. The Petitioner and the Respondent received timely and proper notice of the hearing.

3. The Department of Veterans Affairs has complied with all relevant substantive and procedural requirements of law.

4. Petitioner is a veteran within the meaning of Minn. Stat. §§ 197.455 and 197.46 (1992).

5. As a public works superintendent or foreman, Petitioner was not a department head for purposes of Minn. Stat. § 197.46 (1992). State ex rel. Sprague v. Heise, 243 Minn. 367, 373, 67 N.W.2d 907, 912 (1954).

6. The Respondent is political subdivision of the State of Minnesota for purposes of Minn. Stat. §§ 197.455 and 197.46 (1992).

7. Petitioner was not removed from his employment without a hearing upon due notice and stated charges in writing in violation of Minn. Stat. § 197.46 (1992), as a result of the change in the change in his title, alleged changes in his duties, or his ranking on the City's pay equity plan.

8. The City's decision to change Petitioner's job title was a reasonable exercise of its administrative discretion.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner of the Minnesota Department of Veterans Affairs DISMISS the Petitioner's Petition.

Dated this 5th day of July, 1994.

/s/ Jon L. Lunde

JON L. LUNDE

Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to send its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped; 3 tapes

MEMORANDUM

Under Minn. Stat. § 197.46, municipal employees who are veterans separated from military service under honorable conditions cannot be removed from their position or their employment except for incompetency or misconduct shown after a hearing, upon due notice and stated charges, in writing. Petitioner argues that he was removed from his position as public works superintendent without a hearing in violation of the statute. In Petitioner's view, the change in his job title and duties, coupled with his loss of the personal use of a City pickup, and his ranking on a pay equity plan developed by the City, in their totality, constitute a removal for purposes of the statute. As is discussed below, the Administrative Law Judge is persuaded that the Petitioner was not removed from his position as public works superintendent and that his Petition should, therefore, be dismissed.

As a general rule, a change in job title does not result in a demotion. Commonwealth, Office of Administration v. Orage, 515 A.2d 852 (Penn. 1986); Heyne v. Mabrey, 383 N.E.2d 464, 467 (Ind. App. 1979). Also, as a general rule, there can be no demotion of an employee when the employee maintains his or her existing salary and experiences no change in job duties. Heyne v. Mabrey, 383 N.E.2d 464, 467 (Ind. App. 1978); Balas v. Department of Public Welfare, 563 A.2d 219, 222 (Pa. Cmwlth. 1989); Wise v. South Carolina Tax Commission, 376 S.E.2d 262 (S.C. 1989);

Adelman v. Bahou, 446 N.Y.S. 2d 500, 85 A.D.2d 862 (1981);
McHale v. Commonwealth, 553 A.2d 956 (Penn. 1989). Nor does some asserted
adverse impact on future earnings or opportunities give rise to a supportab.
claim of demotion. Heyne v. Mabrey, *supra*; Balas v. Department of
Public Welfare, 563 A.2d 219 (Pa. Cmwlt. 1989). See also, Gorecki v. Rams
County, 437 N.W.2d 646, 650 (Minn. 1989); Lee v. Metropolitan Airport
Commission, 428 N.W.2d 815, 821 (Minn. App. 1988).

The Veterans Preference Act does not preclude a local government's reasonable exercise of control over its administrative affairs. Gorecki v. Ramsey County, 437 N.W.2d 646, 650 (Minn. 1989). In Gorecki, several Ramsey County attorneys classified as Attorney IV were reclassified as Attorney III without a hearing. The attorneys challenged the reclassification under the Veterans Preference Act, arguing that it constituted a removal. The court rejected that argument.

The reclassification in Gorecki was made after a classification study of Attorney IV positions. The study followed a decision of the Bureau of Mediation Services finding that Attorney IV positions were not supervisory and should be included within the bargaining unit of other county attorneys. The reclassification involved no change in the job duties or salaries of the attorneys who were reclassified, although their salaries were frozen.

In determining when a reclassification constitutes a removal, the court said that it is necessary to examine the substance of the administrative decision rather than its form. Id. The court went on to conclude that the reclassification did not constitute a removal because no one held the position of Attorney IV, the reclassification did not involve a change in the job duties and responsibilities of the attorneys whose positions were reclassified and that the purpose of the reclassification was to place the appellant's job positions into their appropriate classification.

When the title of Petitioner's position was changed from public works superintendent to public works foreman, his job duties and compensation were unaffected. His salary was not reduced but was, in fact, increased several times after his position was "reclassified." Furthermore, his duties were not changed. He had always been required to perform any jobs assigned by the Council, and his responsibilities, in that respect, continued. Furthermore, he continued to supervise public works employees, prepare budgets for the public works department, write specifications for equipment purchases, and perform other acts he had previously performed.

Petitioner argued that his compensation was "decreased" when his title changed because the City subsequently prohibited him from taking the pickup used during working hours to and from work. The City made that decision after another City employee was involved in a motor vehicle accident with a municipal vehicle while off duty. The City's decision to restrict the use of its vehicles to working hours, except for police vehicles, does not constitute a removal or demotion but a reasonable exercise of the City's discretion. Municipalities frequently permit police officers to drive police vehicles to and from work because they believe that it is in the public interest to have police vehicles visible, and police officers likely need to have their vehicles available in case of emergencies. No other City employees are permitted to use municipal vehicles during off-duty hours and the Administrative Law Judge is not persuaded that the decision to preclude Petitioner's use of a City vehicle

for personal purposes constitutes a reduction in his compensation or, even if it does, that it constitutes a removal.

Petitioner also argued that his duties were changed after his title changed. He pointed out that after the title change he became responsible for supervising a park employee and that he became involved in preparing change orders on the construction in a municipal building. However, these "new"

duties were consistent with his job because Petitioner had always been responsible for performing any duties assigned by the Council, and Responder had, at one time, supervised eight temporary employees. The City's decision to abolish the position of park director and assign responsibility for park maintenance to the Petitioner was not related to his title change. Furthermore, it was consistent with Petitioner's responsibility to perform maintenance functions assigned by the Council. Likewise, Petitioner's responsibility for preparing change orders during the construction of a new building, a short-term responsibility, was consistent with his general responsibility to perform the duties assigned by the Council, and his change order responsibilities were consistent with his responsibility for the maintenance of public buildings. Consequently, the Administrative Law Judge was not persuaded that Petitioner's compensation was reduced or that his responsibilities were increased as a result of his title change.

Petitioner also argued that the title change had a "significant" effect on his ranking on the 1993 pay equity plan adopted by the City and that his ranking directly affected the compensation he is paid. Petitioner's argument with respect to his ranking on the City's pay equity plan lacks merit. It is important to note, further, that Petitioner's relative ranking in the public works department was unchanged after his title change. No one was hired to become the public works superintendent, and all the duties Petitioner previously performed as public works superintendent he performed as public works foreman. Furthermore, the ranking adopted by the City in its pay equity plan was based on a good faith examination of municipal positions, unrelated to his title change, and reasonable.

In Gorecki v. Ramsey County, 419 N.W.2d 76, 80 (Minn. Ct. App. 1988), the Minnesota Court of Appeals discussed the issue of reclassification decisions and comparable worth adjustments made by local units of government stating:

Ramsey County argues and we agree that if it and other units of government are forced to hold a veterans preference hearing in determining competency or misconduct when making reclassification decisions, government personnel practices will be thrown into shambles. This is particularly serious concern in light of upcoming comparable worth decisions. Comparable worth adjustments by local units of government may require a substantial number of reclassification decisions. If a local unit of government is required in each of these reclassification decisions to grant a hearing and determine misconduct or incompetency, implementation of comparable worth requirements will be seriously delayed.

Id. at 80.

The comparable worth (pay equity) plan adopted by the City did not result in a reduction, but rather an increase, in Petitioner's pay. Furthermore, i

was wholly unrelated to the change in his job title and did not involve any change in the status quo. Prior to the pay equity plan adopted in 1993, the City had no pay equity plan. The plan adopted at that time, which was approved by DOER, did not, therefore, result in a removal from employment or a demotion.

Under all the circumstances, it is concluded, therefore, that Petitioner has failed to establish that he was removed from his position as public works superintendent for purposes of the Veterans Preference Act and that he is not therefore, entitled to a hearing on the change in his title. The Council simply determined that Petitioner was more properly classified as a public works foreman because the Council expected him to spend time doing the same kinds of duties performed by the employees he supervised. The Council apparently wanted to make it clear to Petitioner that he was to spend time performing those functions. The Council's decision was shown to have been made in good faith and was a reasonable exercise of its administrative discretion. Petitioner has failed to show that the Council was motivated by bad faith or that its reclassification was made as a subterfuge for disciplinary action.

JLL